

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERSON-PILOT LIFE INSURANCE	:	CASE NO. C-1-02-479
COMPANY,	:	
	:	(Judge Watson)
Plaintiff/Counter Defendant,	:	(Magistrate Judge Hogan)
	:	
vs.	:	<u>PLAINTIFF AND COUNTERCLAIM</u>
	:	<u>DEFENDANT'S MOTION FOR</u>
CHRISTOPHER L. KEARNEY,	:	<u>RECOVERY OF COSTS</u>
	:	
Defendant/Counter Plaintiff.	:	
	:	

Now comes Plaintiff Jefferson-Pilot Life Insurance Company and moves this Court for an Order requiring Defendant Christopher L. Kearney ("Kearney") to reimburse Jefferson-Pilot for its costs incurred in defending the depositions of William Hughes and Robert Mills. This Court previously ruled that when the depositions of these witnesses were re-noticed, it would be at Defendant's cost. Counsel for Defendant appeared to acknowledge this obligation during the December 27, 2006 conference with the Court. When Plaintiff's counsel requested reimbursement, however, Defendant refused. An Order from this Court is now required. Specifically Jefferson-Pilot seeks an Order taxing the costs of the travel associated with the

depositions of Mr. Mills and Mr. Hughes in the amount of \$2,566.62.¹ Of course, attorney preparation and travel time are not included in this figure.

Respectfully submitted,

/s William R. Ellis
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Insurance Company and Cross-Claim Defendant,
Disability Management Services, Inc.

¹ The costs break down as follows:

Air fare	\$1,141.80
Hotel	571.02
Car Rental	618.55
Parking and Tolls	41.05
Cab Fare (from airport)	24.00
Phone and Internet Access:	28.35
Meals	141.85
Total:	\$2,566.62

MEMORANDUM IN SUPPORT

On May 14, 2004, Mr. Kearney, through his counsel, took the deposition of Robert Mills. This deposition was taken pursuant to Notice in accord with a schedule set by Kearney's counsel. Several other depositions were taken during the same trip, and Mr. Hughes' deposition was scheduled but not begun. When it became apparent that the depositions were not going to be completed during the time requested by Kearney's counsel, counsel for Jefferson-Pilot suggested that the attorneys reschedule their flights and remain in Worcester, Massachusetts to complete the depositions as noticed. Mr. Ellis did not want to incur the cost of a second trip to Massachusetts and offered to make the witnesses available to complete the depositions at that time. Mr. Kearney's counsel refused.

Upon counsel's return to Cincinnati, several outstanding discovery issues remained, including Mr. Kearney's wish to reschedule Mr. Hughes' deposition and complete Mr. Mills' deposition. Mr. Kearney attempted to notice these witnesses for depositions in Cincinnati. Jefferson-Pilot raised the objection that because Mr. Hughes and Mr. Mills lived in Massachusetts, the depositions, if they went forward, should take place there. Jefferson-Pilot also objected that it should not have to incur the cost of returning to Massachusetts to complete depositions that should have been taken during the original trip. The Court ruled that:

The Court finds that the depositions of Mills and Hughes should go forward. These deponents appeared for their depositions in Massachusetts previously and the Mills deposition was begun, but was not completed. . . . These depositions should occur in the state and county where the deponents reside and be at Defendant's cost. Defendant's failure to complete both depositions when scheduled is not the fault of either deponent.²

Thus, although the Court agreed with Mr. Kearney that he must be afforded the opportunity to complete the depositions of Mr. Mills and Mr. Hughes, under the circumstances it

² Exhibit A, Document No. 76, 7-26-04 Order.

ordered him to bear the cost of completing those depositions. The Order that the rescheduled depositions be taken at Defendant's cost may seem extraordinary, but was in keeping with previous orders in this case. The Court had earlier required Plaintiff to pay Defendant's costs in traveling to complete depositions when Defendant persuaded the Court that the witness presented for deposition was not prepared.

When the issue of deposing Mr. Hughes and Mr. Mills was raised during the December 27, 2006 conference with the Court, Mr. Kearney's counsel seemed to agree that he would bear the cost. Mr. Ellis reminded the Court of his offer to stay and complete Mr. Hughes' and Mr. Mills' depositions, his objection to paying for a return flight and other costs, and the Court's Order at Document No. 76 which required Defendant to bear the cost of returning for another deposition.³ Mr. Ellis also reminded the Court that a similar order had previously been applied to Jefferson-Pilot. At that point, the Court turned its attention to Mr. Roberts and asked: "So, Mike?" to which Mr. Roberts responded "Happy to do it."⁴ The Court then directed counsel to try to work out the specifics. Now that the depositions have been taken and the costs incurred, Mr. Roberts has refused to reimburse Jefferson-Pilot.

Mr. Kearney refused to complete the deposition of Mr. Mills when given a reasonable opportunity. In recognition of this, the Court ordered that when the deposition was completed, Mr. Kearney had to bear the costs of completion. During the December 27, 2006 conference with the Court, Mr. Roberts, in response to Mr. Ellis's concern that he might have to pay for a return flight to Worcester, agreed that he would be "happy" to bear the costs of the parties' attending the depositions as previously ordered. Now that the costs have been incurred he refuses to

³ Exhibit B, transcript of December 27, 2006 conference at p. 45, ln. 2-15.

⁴ *Id.* at ln. 16-17.

reimburse Jefferson-Pilot. Jefferson-Pilot, therefore, respectfully requests that this Court issue an Order taxing the costs of the deposition to Defendant in the amount of \$2,566.62.

Respectfully submitted,

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Disability Management Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed with the Court by electronic means on this 25 day of June, 2007. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ William R. Ellis

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